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CONCORD, N.H.

Mr. Leonard Hadley
Right of Way Division
Department of Public Works & Highways
State House Annex

Dear Mr. Hadley:

You have asked whether the designation of a new section of highway as a limited access highway requires determination of occasion therefor upon hearing by the Governor with advice of the Council. In my opinion such a hearing is essential to the valid establishment of a limited access highway.

Revised Laws, chapter 90, as amended by chapter 188, Part 7, section 2, Laws of 1945, defining the procedure for laying out a limited access highway, provides for hearing and the appointment of a commission to acquire the necessary property rights. Sections 3-9 of Part 7, chapter 188, Laws of 1945 define the authority of the Commissioner in planning, completion and management of such a highway after occasion for its layout has been determined as provided in section 2. If it had been the intention of the Legislature that occasion for limited access highways should be determined by the Commissioner under the terms of section 4, I believe such intention would have been clearly expressed.

The concept of the limited access highway is new to the law of this state. It is in abrogation of the general highway law under which an abutting owner is entitled to access to and from his land at all points, in the absence of extraordinary circumstances. (*Tilton v. Sharpe*, 84 N. H. 393; *Maine-New Hampshire Interstate Bridge Authority v. Estate of Ham*, 92 N. H. 277). I believe the statute should therefore not be extended by implication beyond the plain import of its terms.

My conclusion is that the designation of a highway as a limited access highway may be made only upon hearing as described in section 2.

Very truly yours,

Maurice M. Elodgett
Deputy Attorney General

MEM:RM